**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**APPEAL FROM ORDER NO. 151 OF 2006**
**WITH**
**CIVIL APPLICATION NO. 200 OF 2006**

Kanchan G. Patil & Anr. ..Appellants

versus

MHADA & Ors. ..Respondents

Shri R. A. Thorat with Shri P. P. Surve for the Appellants.

Shri A. A. Kumbhakoni, Associate Advocate General with Shri A.R.Patil, AGP for the Respondent No.1 - MHADA.

Shri Vinit Naik with Shri S. B. Pawar i/b. S. K. Legal Associates for Respondent Nos. 2 and 3.

Ms. Geeta Joglekar for the Respondent No.4 - MCGM.

**CORAM : A.M. KHANWILKAR, J.**
**DATE : 1ST MARCH,2006**

**P.C. :**

1. Heard learned counsel for the parties. Perused the record. I see no infirmity in the approach adopted by the court below in dismissing the Notice of Motion taken out by the Appellants praying for interim injunction. In my opinion, the approach adopted by the trial court and analysis

done and reasoning recorded in paragraph 8 of the impugned order, are just reasons for adopting the course of dismissal of the Notice of Motion.

2. Shri Thorat, however, contends that the court below has proceeded on erroneous premise that the plot was never reserved for any public purpose. He placed reliance on the letter dated 26.3.1988 at page 10 of the accompanying Civil Application, which was issued by MHADA addressed to the Secretary of the Tenants Association clearly mentioning that no construction of building will be permitted on the disputed plot as the same was reserved for garden. He also placed reliance on plan issued by the Officers of MHADA in 1987 to support the argument that the suit plot was reserved for garden being public purpose. Shri Thorat, however, clearly accepts that both these documents are not part of the record and were never brought to the notice of the trial court.

3. Be that as it may, I find substance in the submissions canvassed on behalf of the Respondents that the documents, which are referred to by the appellants were issued on the basis of tentative lay

out plan. However, the development plan which has been finally approved and published makes no reference to reservation of suit land for public purposes, but is mentioned as residential plots. There is no reason to doubt the correctness of the position stated on behalf of the Respondents on affidavit. In the circumstances, this appeal deserves to be dismissed and the same is dismissed.

4. In view of this order, accompanying Civil Application is also disposed of.

5. At this stage, Shri Thorat for the Appellants pray that the Appellants be permitted to take out appropriate application before the trial court, so that the documents, referred to above can be brought on record. If such an application is filed by the appellants before the trial court, the same will be decided on its own merits.

1.3.2006 A. M. KHANWILKAR, J.